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Supreme Court, U.S.
FILED

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In The OFFICE OF THE CLERK

Supreme Court of the United States

October Term, 1997

Cicely Ann Procopio,
a minor, by and through her next friend and mother,
Suzette Procopio,
in Propria Persona,

Petitioner

vs

UNIVERSITY SCHOOL OF NOVA SOUTHEASTERN UNIVERSITY,
individually and in its
official capacity as a not-for-profit
corporation authorized to do business in the State of Florida,
et al

Respondent

Petition for Writ of Certiorari

Cicely Ann Procopio, a minor,
by and through her next friend and mother,
Suzette Procopio,
in Propria Persona, Sui Juris
2564 NW 89 Drive
Coral Springs, Florida 33065
(954)345-5492
Petitioner

29 pp

Question Presented

Was Appellant denied due process when the Trial Court entered summary judgement absent a hearing on the merits?

Parties to the Proceeding

Cicely Ann Procopio, a minor,
by and through her next friend and mother,
Suzette Procopio, in Propria Persona, Petitioner

UNIVERSITY SCHOOL OF NOVA SOUTHEASTERN
UNIVERSITY, Respondent

Patricia Jacobson, Respondent

Mary Mizell, Respondent

Fred Malan, Respondent

Robert Pomeroy, Respondent

Jay St.John, Respondent

Ovid Lewis, Respondent

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I. The Petition should be granted because the opinion below erred by stating that Petitioner failed to state a claim under 42 U.S.C. § 1985 (3).

II. The Petition should be granted because the opinion below erred and abused its discretion by requiring a pro per to meet the same standards as an attorney. Substance not form is the issue. The opinion below dismissed said claims because Petitioner requested damages and relief under inappropriate statutes.

III. The Petition should be granted because the opinion below erred by not allowing the case to fully develop. The Lower Court may or may not be correct. It was simply inappropriate to make a determination at that stage of the proceedings where the court must construe the allegations as true.

IV. The Petition should be granted because the opinion below erred by denying Petitioner her constitutional right to access the courts and her right to redress of grievance with her government. Petitioner was denied due process when the Trial Court entered summary judgement absent a hearing on the merits.

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Appendix

Appendix A - Opinion of the United States Court of Appeals for the Eleventh Circuit - Filed March 10, 1998

Appendix B - Order of the United States District Court Southern District of Florida - Filed February 28, 1997

Petitioner Cicely Ann Procopio, by and through her next friend and mother, Suzette Procopio, in Propria Persona, respectfully request that a writ of error be issued to review the judgement of the United States Court of Appeals for the Eleventh Circuit in this case.

Statement of Jurisdiction

The judgement of the United States Court of Appeals for the Eleventh Circuit ("Court of Appeals") was entered on March 10, 1998. (Appendix A) The Court of Appeals affirmed the lower court's ruling. (Appendix B)

The jurisdiction of this Court is invoked under Article III, United States Constitution and 28 U.S.C. §1331 and §1343.

Constitutional and Statutory Provisions Involved

Fourteenth Amendment Constitutional rights of property, liberty, equal protection of the laws and due process

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Petitioner was enrolled and accepted at University School of Nova Southeastern University, Florida, (hereinafter "Nova"), a private secondary school in the State of Florida, since the 1995-1996 school year. In order to enter certain advanced sophomore classes in the fall, Petitioner chose to enroll in a Geometry class during the summer of 1996. In September 1996, Petitioner began her sophomore year at Nova. On or about October 8, 1996, Respondent's investigating board interrogated Petitioner regarding any involvement with, inter alia, thirteen (13) pilfered Geometry tests. The Respondent's investigating board charged Petitioner with receiving one of the pilfered tests during the 1996 Summer Session. Investigating board/committee, (hereinafter "board"), is comprised of the following five (5) Respondents: Jacobson, Malan, Mizell, Pomeroy, and St. John.

Respondent's board determined that the person who pilfered the tests also sold the tests to some of the Summer Session students. **During the investigation, the student who pilfered the**

tests specifically told the board that Petitioner was offered the tests and refused to purchase them. Two (2) other students, Student 'A' and Student 'B', also attending the Summer Session Geometry class did ultimately admit to purchasing all of the Geometry tests offered by the person who pilfered them.

Respondents, jointly and severally, alleged that Petitioner received or conspired to receive one of the pilfered Geometry tests via facsimile.

Of the two (2) students who admitted to purchasing the pilfered Geometry tests, Student 'A' implicated Petitioner by stating that she faxed Petitioner one (1) of the thirteen (13) tests, however, during the board's investigation, Student 'A' could not identify which test was faxed or when it was faxed to Petitioner and therefore the allegation by this student remains unsubstantiated.

The second of two (2) students who admitted to purchasing the pilfered Geometry tests, Student 'B' vacillated his testimony both for and against the Petitioner during the investigation and

Petitioner alleged he was an unreliable witness. Petitioner's investigation revealed that Student 'B' only had hearsay knowledge of the faxed test. He did not witness the event nor does he know which test was allegedly faxed or when the incident occurred.

After Petitioner's expulsion, on or about November 1, 1996 Petitioner's mother enrolled Petitioner in Coral Springs High School, (a Broward County local public high school), and signed a form requesting Petitioner's transcript from Nova. Approximately three (3) weeks later, under an undated cover letter, Ms. Connie Mulcahy, Nova's Registrar, transmitted Petitioner's official transcript to Coral Springs High School which clearly states Petitioner "withdrew" and was not dismissed as stated in the Respondent's letter to Petitioner's mother dated October 30, 1996. Further, the official transcript does not reflect credit for or show that Petitioner attended summer Geometry class.

During a lengthy conversation, on or about October 31, 1996 with Respondent St. John, Petitioner's mother repeatedly and explicitly refused to withdraw Petitioner from Nova.

Student 'A' and Student 'B', who confessed to purchasing all thirteen (13) of the pilfered Geometry tests are currently attending Nova; they were suspended for five (5) days and lost credit for Geometry. The student who pilfered the tests and sold them was reportedly expelled, and lost his Geometry credit. At least two (2) other summer school students who admitted to purchasing one (1) test, each received a suspension, and to the best of Petitioner's knowledge, did not lose their math credit. Conversely, the Petitioner was verbally "expelled" on October 8, 1996, a letter deemed her "dismissed" on October 30, 1996, and finally the Respondents arbitrarily "withdrew" the Petitioner as per her official transcript. For a student who has an impeccable record, and Respondents who have insufficient incriminating evidence, (if any), expulsion is not only outrageous, but clearly constitutes cruel and unusual punishment and discrimination. Moreover, Petitioner asserts that the board selectively enforced rules.

It is significant to note that Petitioner has always had a clean record and excellent grades. This Petitioner has no violation

on her record, not a dress code violation, not a gum chewing violation, her record is pristine. She comes before this Honorable Court with 'clean hands'. As a direct and proximate result of the foregoing, Petitioner, by the Respondent's actions in concert conspiracy with others, has suffered or was cause to be suffered, severe mental and emotional distress.

The acts of all Respondents described above were performed with malice and deceit along with manipulation of records under color of school authority with willful and wanton disregard of Petitioner's rights secured under the Fourteenth Amendment of the U.S. Constitution and in contravention of regulation Florida State Statutes and Code of Ethics of the Educational Profession in Florida.

Petitioner's reasonable expectation of a continuing, uninterrupted education, due process of law, property and liberty rights and equal protection under the law

The Petitioner filed a 'first amended complaint' and a motion for 'temporary injunctive relief' under Title 42 Section 1985

of the United States Code on the 12th day of February, 1997. Petitioner alleges that Respondents violated Petitioner's Fourteenth Amendment Constitutional rights of property, liberty, equal protection of the laws and due process.

As a direct result of the dismissal by the Trial Court, Petitioner filed this appeal and argues that the Trial Court erred in a gross abuse of discretion when it prematurely dismissed this action without allowing the record to be more fully developed. The Trial Court may or may not be correct. It is simply inappropriate to make that determination at this stage of the proceedings where the court must construe the allegations as true.

ARGUMENT

1. In the Final Order of Dismissal, the District Court asserts that the Petitioner has failed to state a claim under § 1985 (3). The District Court asserts the deficiency is that the Petitioner failed to allege that the Respondent's actions against her were motivated by the Petitioner's membership in a protected class. On page 4 of the District Court's Final Order of Dismissal it states:

> In the First Amended Complaint filed herein (DE 34), the Plaintiff has failed to allege that the Defendants' actions against her were motivated by the Plaintiff's membership in a protected class. Accordingly, the Plaintiff has failed to state a claim under 42 U.S.C. § 1985 (3).

There are four (4) elements that must be established in order to prove conspiracy: (1) conspiracy; (2) for purpose of depriving either directly or indirectly any person or class of persons of equal protection of laws, or of equal privileges and immunities under laws; (3) act in furtherance of conspiracy; and (4) whereby person is either injured in his personal property, or deprived of right, or privilege of citizen of United States.

The second element clearly states 'for purpose of depriving either directly or indirectly any person **or** class of persons....' The connector is 'or' not 'and'. In this case, a person was deprived, not a class of persons. Moreover case law supports the fact that this case should not be dismissed for failure to state a claim:

> A complaint will not be dismissed for failure to state a claim, even though inartistically drawn and lacking in allegations of essential facts, it cannot be said that under no circumstances will the party be able to recover. (12b:34 Fr Serv 29, 19 Fd 511 DCED Pa 1958)

2. The Lower Court asserts that because the Petitioner requested damages and relief under inappropriate statutes (18 USC §§ 3571, 241, 242, 371 and 1001 and 28 USC § 2201 and § 2202), said claims are dismissed. The Trial Court Judge abused his discretion, as he is requiring a pro per to meet the same standards as required by an attorney.

Petitioner has been severely wronged. Even though this pro per may not be using the proper statutes, it is the duty of the Court to see that all issues are fairly addressed:

> Complaint may not be dismissed for failure to state a claim if there is a possibility that plaintiff could obtain some relief on the facts stated, even though plaintiff may not have prayed for the appropriate relief. (US vs White County Bridge Commission, 2 Fr serv 2d 107, 275 F 2d 529 Ca 7 1950)

> Citing Estelle v Gamble, 97 S.Ct. 285, 429 U.S. 97, 50 L.Ed.2d The handwritten pro se document is to be liberally construed. As the Court unanimously held in Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), **a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'** Id., at 520-521, 92

S.Ct. at 596, quoting Conley v Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). (Emphasis added)

3. The Lower Court erred in granting the motion to dismiss the complaint as the Lower Court did not allow the case to fully develop. The Petitioner has not had the opportunity to respond to Respondent's comments regarding the complaint.

> A complaint may not be dismissed on motion if it states some sort of claim, baseless though it may prove to be and inartistically as the complaint may be drawn. This is particularly true where the plaintiff is not represented by counsel. Brooks v. Pennsylvania R. Co., 91 F. Supp. 101 (DC SD NY, 1950).
>
> Pro se complaints, according to the Supreme Court, are held "to less stringent standards than formal pleadings by lawyers," and regardless of who represents the plaintiff, **a motion to dismiss is not to be granted unless it appears beyond doubt that the plaintiff can prove no set of acts which would entitle him to relief.** Haines v. Kerner, 1972, 404 U.S. 519, 30 L. Ed. 2d 652, 92 S. Ct. 594, 496, Reh. Den., 405 U.S. 948, 30 L. Ed. 2d 918, 92 S. Ct. 963. (Emphasis added)
>
> The Haines test is not whether the facts alleged in the complaint would entitle the plaintiff to relief. Rather, it is whether the Court can say with assurance on the basis of the complaint that, beyond any doubt, no set of facts could be proved that would entitle the plaintiff to relief. The reasons for the Haines test are manifest. **A pro se complaint provides an unsatisfactory foundation for deciding the merits of important questions because**

> **typically it is inartfully drawn, unclear, and equivocal, and because thorough pleadings, affidavits, and possibly an evidentiary hearing will usually bring out facts which simplify or make unnecessary the decision of questions presented by the naked complaint....**
>
> **Admittedly, it is tempting to eliminate the meritless complaint at the pleading stage. Unfortunately, this "is another instance of judicial haste which in the long run makes waste,"** Dioguardi v. Durning, 139 F.2d 774, 775 (C.A.2 1944) (Clark, J.), cited with approval in Haines v. Kerner, 404 U.S. 519, 521, 92 S.Ct. 594, 596, 30 L.Ed.2d 652 (1972). (Emphasis added)

4. The lower court erred by denying the Petitioner her constitutional right to access to the courts and her right to redress of grievance with her government and although such denial constitutes reversible error, additional damage is incurred due to the passage of time.

> It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Boyd vs United States, 116 U.S. 616 1886.
>
> Those then, who controvert this principle that the Constitution is to be considered in court as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the Constitution and see only the law. This doctrine would subvert the very foundation of all written constitutions. Marbury v. Madison, 5 U.S. 137, 176.

> The Bill of Rights was provided as a barrier, to protect the individual against arbitrary exactions of...legislatures, (and) courts...it is the primary distinction between democratic and totalitarian way. Re Stroller, Supreme Court of Florida, en banc, 36 So. 2nd 443, 445 (1948)

> ....and in all courts persons of all persuasions may freely appear in their own way, and according to their own manner and there plead their own causes themselves, or if unable, by their friends. Constitution for the Province of East Jersey (1683).

> The lower Court is depriving Appellant of due process and fair and equal treatment under the law. If the Appellant cannot receive justice from the Court system, where then, shall he look. Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the law, the end justifies the means....would bring terrible retribution. "Against that pernicious doctrine this court should resolutely set its face." Justice Brandeis, Olmstead v. United States, 277 U.S. 438, 485. (1928).

Reasons for Granting the Writ

I. The Lower Court erred in ruling that Petitioner failed to state a claim under 42 U.S.C. § 1985 (3).

II. The Lower Court erred and abused its discretion, by requiring a pro per to meet the same standards as an attorney. Substance, not form is the issue. The Lower Court dismissed said claims because Petitioner requested damages and relief under inappropriate statutes.

III. The Lower Court erred in granting the motion to dismiss the complaint as the Lower Court did not allow the case to fully develop. The Lower Court may or may not be correct. It was simply inappropriate to make a determination at that stage of the proceedings where the court must construe the allegations as true.

IV. The Lower Court erred by denying the Petitioner her constitutional right to access the courts and her right to redress of grievance with her government, and although such denial constitutes reversible error, additional damage is incurred due to the passage of time. Petitioner was denied due process when the Trial Court entered summary judgement absent a hearing on the merits.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by US Mail to Heidi Friedman, **PANZA, MAURER, MAYNARD & NEEL, P.A.**, NationsBank Building 3600 North Federal Highway, Third Floor, Fort Lauderdale, Florida 33308 on this 10th day of July, 1998.

Suzette Procopio, a Common Law
Sovereign Freeman
"All Rights Reserved"
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Appendix A - Opinion of the United States Court of Appeals for the Eleventh Circuit - Filed March 10, 1998

Appendix B - Order of the United States District Court Southern District of Florida - Filed February 28, 1997

Appeal from the United States District Court
for the Southern District of Florida

(March 10, 1998)

Before ANDERSON, COX and CARNES, Circuit Judges.

PER CURIAM:

We have carefully reviewed the briefs and the record and agree with the district court that the appellants' claims must be dismissed for the reasons stated in the lower court's order.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 97-6045-CIV-ZLOCH

CICELY ANN PROCOPIO,

Plaintiff,

vs. **FINAL ORDER OF DISMISSAL**

UNIVERSITY SCHOOL OF NOVA, et al.,

Defendants.

_____/

THIS MATTER is before the Court upon the Defendants', Motion To Dismiss Plaintiffs' Amended Complaint, Motion to Strike Damages and/or Motion for Attorneys Fees and Sanctions (DE 40). This Court has carefully reviewed the merits of said Motions, and is otherwise fully advised in the premises.

I. BACKGROUND

In the First Amended Complaint filed herein (DE 34), the Plaintiff, by and through her mother, alleges that she attended, as a freshman, the University School of Nova Southeastern University (hereinafter 'School'), a private secondary school, for the 1995-1996 school year. Following her freshman year, during the summer of 1996, the Plaintiff enrolled in a geometry class offered by the

School. During the summer session, another student acquired thirteen geometry tests and then sold these tests to other students. In October 1996, the School charged the Plaintiff with receiving one of the stolen tests during her enrollment in the geometry class.

During the school's investigation, however, the student who stole the tests told the investigating committee that the Plaintiff was offered the stolen tests but refused to purchase these tests. Moreover, two students who attended the geometry class admitted to purchasing all of the stolen geometry tests. However, one of the students who admitted to purchasing the tests, stated that she sent the Plaintiff, by facsimile, a copy of one of the stolen tests. Ultimately, the School expelled the Plaintiff.

The Plaintiff asserts that the School did not provide notice and an opportunity to be heard prior to the expulsion. The Plaintiff did have an 'informal appeal' at which she was represented by an attorney. Nevertheless, the School subsequently affirmed the Plaintiff's expulsion.

After the Plaintiff's expulsion from the School, she enrolled

at a local public high school. The Plaintiff's mother then requested a transcript be forwarded from the School to the public high school. The Plaintiff alleges that the transcript misrepresents that the Plaintiff 'withdrew' from the School. Furthermore, the Plaintiff alleges that the transcript did not reflect credit for the summer geometry class.

In the above-styled cause, the Plaintiff asserts claims pursuant to 42 U.S.C. § 1985 (3) against the School and various school officials. Essentially, the Plaintiff alleges that the School, the members of the investigatory board and the President/Chief Executive of the School engaged in a conspiracy to deprive the Plaintiff of her liberty and property interests without due process in violation of the Fourteenth Amendment. Specifically, the Plaintiff asserts that she was not given notice and a hearing prior to her expulsion. The Plaintiff further alleges that the Defendants convicted her on vague and ambiguous charges and falsified school records. The Plaintiff further alleges that her expulsion constitutes cruel and unusual punishment. The Plaintiff further alleges that the

School denied her of right to an education for sixteen days. Finally, the Plaintiff alleges that in expelling her, the School did not follow the guidelines set forth in the School's Student and Parent Handbook and various state administrative provisions.

II. DISCUSSION

As previously noted, the Plaintiff has asserted §1985 (3) claims against the Defendants. The elements of a cause of action under §1985 (3) are: (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived on any right or privilege of a citizen of the United States. Childree v. UAP/GA AG Chem, Inc., 92 F.3d 1140, 1146-47 (11th Cir. 1996).

The second element "requires a showing of some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators action." Id. (internal quotation marks and

citations omitted).

In Bray v. Alexandria Women's Health Clinic, 506 U.S. 263 (1993), the United States Supreme Court interpreted this requirement as implying "more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker... selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." In the First Amended Complaint filed herein (DE 34), the Plaintiff has failed to allege that the Defendants' actions against here were motivated by the Plaintiff's membership in a protected class. Accordingly, the Plaintiff has failed to state a claim under 42 U.S.C. §1985 (3).

Furthermore, the Court notes that in her prayer for relief, the Plaintiff requests damages pursuant to 18 U.S.C. § §3571, 241, 242, 371, and 1001. These statutes are criminal in nature and do not afford a private cause of action. Therefore, to the extent that the Plaintiff attempts to assert a claim under these statutes, said claims are dismissed. Moreover, to the extent that the Plaintiff attempts to

assert a claim under 28 U.S.C. § §2201 and 2202, said claims are dismissed.

Finally, to the extent that the Plaintiff asserts any state law claims, the Court notes that 28 U.S.C. § 1367 (a) provides that

> in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

It is clear that this Court has original jurisdiction over Plaintiff's federal law claim pursuant to 28 U.S.C. §1331. After reviewing the First Amended Complaint (DE 34) herein, the Court finds that the state claims against Defendants are so related to the federal claim in the instant action that they form part of the same case or controversy. 28 U.S.C. §1367 (a). Therefore, this Court has the authority to exercise supplemental jurisdiction over the state claims in the instant action.

Nevertheless, the Court's supplemental jurisdiction inquiry does not end here. In 1990, Congress codified the formally well-

PUBLISHER'S NOTE:

Page(s) missing in original.